

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 2105

Chapter 280, Laws of 2001

57th Legislature
2001 Regular Legislative Session

SMALL FOREST LANDOWNERS

EFFECTIVE DATE: 7/22/01
Passed by the House April 16, 2001
Yeas 94 Nays 0

FRANK CHOPP
Speaker of the House of Representatives

CLYDE BALLARD
Speaker of the House of Representatives

Passed by the Senate April 11, 2001
Yeas 47 Nays 0 CERTIFICATE

We, Timothy A. Martin and Cynthia Zehnder, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is SUBSTITUTE HOUSE BILL 2105 as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER
Chief Clerk

TIMOTHY A. MARTIN
Chief Clerk
BRAD OWEN
President of the Senate

Approved May 11, 2001
FILED

May 11, 2001 - 10:12 a.m.
GARY LOCKE
Governor of the State of Washington Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 2105

AS AMENDED BY THE SENATE

Passed Legislature - 2001 Regular Session

State of Washington 57th Legislature 2001 Regular Session

By House Committee on Natural Resources (originally sponsored by Representatives Sump, Doumit, Pearson, Rockefeller and Woods).

Read first time 02/26/2001. Referred to Committee on .

AN ACT Relating to small forest landowners; amending RCW 76.13.110 and 76.13.120; and adding a new section to chapter 76.13 RCW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 76.13.110 and 2000 c 11 s 12 are each amended to read as follows:

- (1) The department of natural resources shall establish and maintain a small forest landowner office. The small forest landowner office shall be a resource and focal point for small forest landowner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.
- (2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120. With respect to that program, the office shall have the authority to contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements {+ or to lay out streamside buffers and comply with other forest and fish regulatory requirements related to the forest riparian easement program+}.
- (3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in {+ rules and +} a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the landowner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions. The small forest landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the sub-basin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a sub-basin or watershed.
- (4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. Appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for

reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

- (5) By December 1, (({- 2000 -})) {+ 2002 +}, the small forest landowner office shall provide a report to the board and the legislature containing:
- (a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;
 - (b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;
 - (c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;
 - (d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and
 - (e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.
- (6) By December 1, (({- 2002 -})) {+ 2004 +}, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:
- (a) Trends in the items estimated under subsection (5)(a) through (d) of this section;
 - (b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and
 - (c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends.

Sec. 2. RCW 76.13.120 and 2000 c 11 s 13 are each amended to read as follows:

- (1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.
- (2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.
 - (a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.
 - (b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board{+ , or timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules +}.

- (c) “Small forest landowner” means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small timber harvester under RCW 84.33.073(1); and (iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.073(1) during the ten years following application. If a landowner’s prior three-year average harvest exceeds the limit of RCW 84.33.073(1), or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources’ reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition as of the date that the forest practices application is submitted {+ or the date the landowner notifies the department that the harvest is to begin +} with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. {+ If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section. +}

- (d) “Completion of harvest” means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.
- (3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources may not transfer the easements to any entity other than another state agency.
- (4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.
- (5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.
- (6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner’s marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small forest landowner as provided for in this section. {+ The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because

of restrictions under the forest practices rules. +} The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted {+ or the date the landowner notifies the department that the harvest is to begin +}. If, under the forest practices rules adopted under chapter 4, Laws of 1999 sp. sess., some qualifying timber may be removed prior to the expiration of the fifty-year term of the easement, the small forest landowner office shall apply a reduced compensation factor to ascertain the value of those trees based on the proportional economic value, considering income and growth, lost to the landowner.

- (7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section{+ , plus the compliance costs as determined in accordance with section 3 of this act +}. If the landowner accepts the offer {+ for qualifying timber that will be harvested pursuant to an approved forest practices application +}, the department of natural resources shall pay the compensation promptly upon (a) completion of harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and © execution and delivery of the easement to the department of natural resources. {+ If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i) verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. +} Upon donation or payment of compensation, the department of natural resources may record the easement.
- (8) For approved forest practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.
- (9) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:
 - (a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;
 - (b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;
 - © Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;
 - (d) A method to determine that a forest practices application involves a commercially reasonable harvest{+ , and adopt criteria for entering into a forest riparian easement where a

commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules +};

- (e) A method to address blowdown of qualified timber falling outside the easement premises;
- (f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;
- (g) High impact regulatory thresholds;
- (h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and
- (i) A method for internal department of natural resources review of small forest landowner office compensation decisions under subsection (7) of this section.

{+ NEW SECTION. +} Sec. 3. A new section is added to chapter 76.13 RCW to read as follows:

In order to assist small forest landowners to remain economically viable, the legislature intends that the small forest landowners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the riparian easement program. For purposes of this section, "compliance costs" includes the cost of preparing and recording the easement, and any business and occupation tax and real estate excise tax imposed because of entering into the easement.

Passed the House April 16, 2001.

Passed the Senate April 11, 2001.

Approved by the Governor May 11, 2001.

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